

REMARKS/ARGUMENTS

Claims 11- 16 are active.

The claimed invention provides a fluid dispensing container described in Claim 13 and claims dependent thereon, and a method for preparing the fluid dispensing container according to Claim 14 and claims dependent thereon. The claimed fluid dispensing container is simple in production, does not employ a propellant, and yet provides the dispensing performance of an aerosol system. The pressure necessary to move the fluid from the sealed chamber is provided by a low-boiling liquid placed in the sealed container. No such container is disclosed or suggested in the cited references.

The rejection of Claims 11, 12, 13, 14 and 16 under 35 U.S.C. 102(b) over Nakajima et al. (GB 1,537,436) is respectfully traversed.

Nakajima describes an airtight vessel which is pressurized with a gas (Claim 1). All the examples in Table 1 describe a pressurized air-tight vessel containing from 2.0 to 15.0 % by weight of a pressurized gas. Applicants respectfully submit that nowhere does this reference disclose or suggest a fluid dispensing container where the container is not pressurized with a gas. The reference actually states (page 4, lines 23 to 31) the importance of pressurizing the container as follows:

(2) Since the air-tight vessel is employed, a volatile content can be filled, and the spraying device can be used in the same manner as an aerosol-type spraying device and a similar effect or condition can be attained.

(3) Spraying is accomplished by the synergistic action of the mechanical pressurization of the piston and the pressure of the content per se.

The Office has acknowledged that Nakajima teaches an air-tight vessel in which a low pressure gas is preliminarily filled so as to facilitate maintenance of a low pressure in

the atmosphere in the interior of the air-tight vessel (Official Action dated June 3, 2009, page 4, lines 15-19)

In contrast, according to the present invention a fluid dispensing container is charged by adding the contents to a container as a liquid and no gas pressurization is employed. After the liquid mixture (low-boiling liquid and fluid to be dispensed) are placed in the container, the pump is mounted and sealed without adding a propellant to effect pressurization. The advantages of the claimed invention include: 1) risk of fluid leakage is avoided; and 2) charging the container is a simple operation.

Applicants again respectfully call the Examiner's attention to *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972) which states:

"[R]ejections under 35 U.S.C. 102 are proper only when the claimed subject matter is identically disclosed or described in "the prior art." Thus for the instant rejection under 35 U.S.C. [102(b)] to have been proper, the . . . reference must clearly and unequivocally disclose the claimed [subject matter] or direct those skilled in the art to the [subject matter] . . ."

In view of the foregoing, Applicants respectfully submit that the cited reference does not meet the Arkley test and therefore cannot anticipate the claimed invention. The cited reference actually teaches that a pressurized gas is required. In all the examples of the cited reference, a propellant gas such as tetrafluordichloroethane, isobutene or carbon dioxide is used. Nakajima describes that spraying is assisted by the pressure developed inside the container due to the presence of a pressurized gas (page 4, lines 26-31). Accordingly Applicants respectfully submit that this reference cannot render the claimed invention obvious, and withdrawal of the rejection of Claims 11, 12, 13, 14 and 16 under 35 U.S.C. 102(b) over Nakajima is respectfully requested.

The rejection of Claim 15 under 35 U.S.C. 103(a) over Nakajima in view of Marelli (U.S. 2003/0150880) is respectfully traversed.

Applicants note that Claim 15 depends indirectly from Claim 13 and therefore includes all the description of the independent claim. The Office has acknowledged that Nakajima does not teach a method of sealing including processes of screwing, seam-joining, rolling and clinching and cites Marelli to show a ring cap screwable onto a container.

Marelli describes a dispensing pump with improved sealing for application to liquid containers. Nowhere does this reference disclose or suggest mounting and sealing a pump without use of a propellant gas as according to the claimed invention. Therefore, Applicants respectfully submit that Marelli cannot cure the deficiencies of Nakajima described above.

In view of the above, Applicants respectfully submit that the cited combination of references cannot render Claim 15 obvious and withdrawal of the rejection of Claim 15 under 35 U.S.C. 103(a) over Nakajima in view of Marelli (U.S. 2003/0150880) is respectfully requested.

The provisional rejection of Claims 11-16 on the ground of nonstatutory obviousness-type double patenting over copending U.S. Application 11/418,253 in view of Nakajima is respectfully traversed.

Applicants have previously described that Nakajima employs an air tight vessel in which the atmosphere is maintained at a low pressure by a pressurized gas (See also page 2, lines 15-20 of present specification). The Office has alleged that it would have been obvious to prepare the fluid dispensing container of Nakajima equipped with the fluid dispensing unit of copending U.S. Application 11/418,253. However, such combination would not lead to the present invention because Nakajima requires propellant as described above.

Applicants note that in reversing an obviousness rejection in *Ex parte SUSUMU TANAKA and YASUO MURAKAMI* (Appeal 2007-3845; Decided: March 28, 2008) the Board of Patent Appeals and Interferences stated:

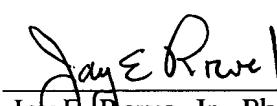
In order to establish a *prima facie* case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)

In view of the Nakajima description of pressure use during charging of the container, Applicants respectfully submit that a *prima facie* case of obviousness cannot be established. Accordingly, withdrawal of the provisional rejection of Claims 11-16 on the ground of nonstatutory obviousness-type double patenting over copending U.S. Application 11/418,253 in view of Nakajima is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for allowance and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Jay E. Rowe, Jr., Ph.D.

Registration No. 58,948

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)